

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-290
Administrative Law Judge Division

RESOLUTION

RESOLUTION ALJ-290. Amends the Rules of Practice and Procedure (Title 20, Division 1, of the California Code of Regulations).

Summary

This resolution approves amendments to the Commission's Rules of Practice and Procedure (Title 20, Division 1, of the California Code of Regulations) as set forth in Attachment A. The amendments update the Rules to [improve the usability and readability of] and to provide greater clarity as specifically discussed below.

Notice of these amendments, and comment on them, are governed by Government Code §§ 11346.4 and 11351, and California Code of Regulations, Title 1, §§ 1-120. Notice of these amendments as originally proposed was published in the California Regulatory Notice Register on [DATE]. Pursuant to Pub. Util. Code § 311(h), these amendments shall be submitted to the Office of Administrative Law for review and publication in the California Code of Regulations, and for transmittal to the Secretary of State.

Rule 1.2, Construction

We amend Rule 1.2 to clarify that the Commission's discretion to deviate from the rules is limited to the extent permitted by statute.

Rule 1.5, Form and Size of Tendered Documents

For greater ease of reading and resource conservation, we amend Rule 1.4 (1) to require footnote text size to be no smaller than 12 point, (2) to require the use of both sides of paper where practicable, and (3) to require page numbering.

Rule 1.9, Service Generally

We amend Rule 1.9(d) to clarify that service of a Notice of Availability may be made in lieu of hard copy or e-mail service of a document.

We amend Rule 1.9(e) to require the caption for the proceeding and the docket number to be indicated on the certificate of service.

We amend Rule 1.9(f) to clarify that it is the responsibility of the person or entity on the official service list to ensure that its information on the official service list is accurate and current.

Rule 1.10, Electronic Mail Service

We amend Rule 1.10(d) to delete (1) the explanation of what constitutes failure of e-mail service, as this term is of such common knowledge in California as it cannot reasonably be the subject of dispute; (2) the prerequisite that the receiving person consents to the use of e-mail service, as Rule 1.10(a) provides that a person consents to the use of e-mail service by providing an e-mail address for the official service list; (3) the provision allowing persons to agree to other arrangements, as this provision is self-evident and self-effecting; and (4) the provision excusing re-service on persons listed as “Information Only,” as the burden of electronically re-serving a document is small as compared to the public interest in effecting service on non-parties.

Rule 1.13, Tendering of Document for Filing

We amend Rule 1.13(b)(1)(i) to provide that electronically transmitted documents must be in searchable format.

Rule 2.4, CEQA Compliance

We amend Rule 2.4 to require an applicant, in an application for authority to undertake a project that is subject to the California Environmental Quality Act, to submit the Proponents Environmental Assessment (PEA) to the appropriate Commission industry division, rather than file the PEA with the application. The PEA is merely the applicant’s base assessment of the environmental impacts of a project, for use by the industry division in the industry division’s independent conduct of the environmental review and preparation of the environmental review document (environmental impact report or negative declaration) pursuant to CEQA; while the industry division’s environmental review document will ultimately become a part of record, the PEA generally has no independent legal or evidentiary purpose in the formal proceeding. Accordingly, there is no cause to require the PEA to be filed as part of the application.

However, we also amend the rule to require the applicant to include in the application a declaration of compliance with this rule.

Rule 3.3, Certificate to Operate

We delete references to rescinded sections of the Public Utilities Code.

Rule 3.6, Transfers and Acquisitions

We amend Rule 3.6 by adding the word “property” to clarify that an application to sell, lease or encumber utility property falls within the scope of this rule.

Rule 4.2(b), Form and Content of Complaints

We delete current Rule 4.2(b), as it is merely redundant of the general requirements of Rule 1.13.

Rule 8.3, Reporting Ex Parte Communications

We amend Rule 8.3(g) to correct the typographically erroneous cross-references from Rule 8.3 to Rule 8.4. (We also correct similar errors as they appear on the Commission's website in Rules 8.3(e), (i), (j) and (k), although they do not appear in the California Code of Regulations.)

Rule 13.1, Notice

We amend Rule 13.1(a) to clarify that it applies to notice of evidentiary hearing (as opposed to other settings not addressed in Article 13).

Rule 13.7, Exhibits

We amend Rule 13.7(a) to require evidentiary exhibits to be bound, page numbered, and to include a table of contents for ease of usage, and edit the rule for clarity.

Rule 13.8, Prepared Testimony

We delete current Rule 13.8(d) because, with the proposed amendment to Rule 13.7(a), it is redundant.

Rule 13.11, Briefs

We amend Rule 13.11, first, to clarify that the rule applies to closing briefs on the matter in chief after the taking of evidence (as opposed to memorandums of points and authorities or briefs on limited points of law); second, to reflect common practice and procedure of requiring factual statements to be supported by evidence of record; and, third, to require citations to exhibits to indicate the exhibit number and exhibit page number.

Rule 13.13, Oral Argument Before Commission

As currently written, Rule 13.13 provides that requests for oral argument before the Commission shall be made in the manner specified in the scoping memo or later ruling in the proceeding. The typical procedure that is specified in Commission practice is for a party to make its request in closing brief; however, it is common for the scoping ruling to omit specification of the request procedure or for a later ruling to address it. We amend Rule 13.13 to make that typical procedure the default rule in the absence of a contrary ruling in the proceeding.

Rule 14.1, Definitions

As currently written, Rule 14.1 defines the term "alternate" as a substantive revision by a Commissioner to a recommended decision proposed by that Commissioner, regardless of whether it is to a proposed decision (or alternate) in a formal proceeding

or to a draft resolution (or alternate) in an informal proceeding. We amend the rule to designate an alternate in a formal proceeding as an “alternate proposed decision” and an alternate in an informal proceeding (i.e., to a draft resolution) as an “alternate draft resolution,” in order to more precisely identify the nature of the alternate recommended decision at issue.

As currently written, Rule 14.1(d) provides that a substantive revision to a proposed decision or draft resolution is not an “alternate” decision (requiring 30 days of public review and comment) if the revision is made in response to prior comments on it. We amend Rule 14.1 to clarify that, consistent with the plain language and intent of Pub. Util. Code § 311(e), such revision is not an “alternate” decision only in the event that the revision is made by the proponent of the proposed decision or draft resolution; if the revision is made by a decision maker other than the proponent of the proposed decision or draft resolution, it is an “alternate” decision.

Rule 14.2, Issuance of Recommended Decision

We amend Rule 14.2 to edit out the phrase to the effect that a recommended decision, when filed, will be served without undue delay. This language is superfluous as, consistent with Rule 1.9(b), all documents that are tendered for filing must be served on the official service list.

We also amend the rule to clarify that, pursuant to Pub. Util. Code § 1701.3(a), an alternate decision by the assigned Commissioner or assigned Administrative Law Judge who is not the presiding officer shall be filed concurrently with the proposed decision.

We also amend the rule to use the term “alternate proposed decision” or “alternate draft resolution,” consistent with the amendment to Rule 14.1 discussed above.

Rule 14.5, Comment on Draft or Alternate Resolution

As currently written, Rule 14.5 provides that comment on a draft or alternate resolution shall be served on the director of the Commission division that issued it, as well as on other persons as specified in the instructions accompanying the notice of the resolution. In practice, however, the director of the Commission division is not a necessary recipient of the comments and assigned staff responsible for reviewing the comments is specified in the instructions accompanying notice of the draft or alternate resolution in the Daily Calendar. Also as currently written, Rule 14.5 provides no guidance as to when comments on a draft or alternate resolution shall be served beyond stating that it shall be no later than 10 days before the Commission meeting when it will be considered. In practice, however, the time for serving comments is specified in the instructions accompanying notice in the Daily Calendar. We amend Rule 14.5 to simply provide that the persons to be served (including Commission staff) and the time for serving comments shall be as specified in the instructions.

We also delete the phrase “as an agenda item” from the description of the notice of the resolution in the Daily Calendar, consistent with the fact that the item is not noticed as an agenda item in the Daily Calendar, and add clarification that the notice is of the draft or alternate resolution (as opposed to the resolution as ultimately issued by the Commission).

We also amend the rule to use the term “alternate proposed decision” or “alternate draft resolution,” consistent with the amendment to Rule 14.1 discussed above.

Rule 14.6, Reduction or Waiver of Review

We amend the rule to make minor edits to subsections (a) and (c) for clarity.

Rule 15.2, Meeting Agenda

We amend Rule 15.2 to reflect that the agenda is available at the Commission’s Central Files Office, not the Process Office as currently written.

Rule 16.6, Extension of Time to Comply

As currently written, Rule 16.6 provides that requests for extension of time to comply with a Commission decision must be received at least three business days before the existing date of compliance. It has proved to be unduly burdensome to process such requests within the indicated time period, as it requires consultation with the Administrative Law Judge Division and the preparation, filing and service of an executive director’s order. We therefore amend Rule 16.6 to require such requests to be received at least 10 days before the existing date of compliance.

Notice of Proposed Amendments

Notice of these amendments, and comment on them, are governed by Government Code §§ 11346.4 and 11351, and California Code of Regulations, Title 1, §§ 1-120. Notice of these amendments as originally proposed was published in the California Regulatory Notice Register on [DATE]. In addition, on [DATE], the draft resolution containing the amendments as originally proposed was mailed to all persons on the service list used by the Commission for this purpose.

Comments on Draft Resolution

Comments were received from _____.

THEREFORE IT IS RESOLVED that the amendments to the Rules of Practice and Procedure set forth in the appendix are adopted.

This resolution is effective today.

I certify that this resolution was adopted by the Public Utilities Commission at its regular meeting on [DATE], the following Commissioners approving it:

PAUL CLANON
Executive Director

APPENDIX**AMENDMENTS TO RULES OF PRACTICE AND PROCEDURE****1.2. (Rule 1.2) Construction.**

These rules shall be liberally construed to secure just, speedy, and inexpensive determination of the issues presented. In special cases and for good cause shown, and within the extent permitted by statute, the Commission may permit deviations from the rules.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701, Public Utilities Code.

1.5. (Rule 1.5) Form and Size of Tendered Documents.

Documents tendered for filing must be typewritten, printed, or reproduced on paper 8 1/2 inches wide and 11 inches long. Any larger attachments must be legibly reduced or folded to the same size. The body and footnote text type must be no smaller than 12 points. The impression must use 1 1/2-line or double spacing, except that footnotes and quotations in excess of a few lines may be single-spaced. Both sides of the paper ~~may~~ must be used, where practicable. Pages must be numbered. The left margin must be at least one inch from the left edge of the page and the right margin at last ½ inch from the right edge of the page. A document of more than one page must be bound on the left side or upper left-hand corner. If a transmittal letter is submitted (see Rule 1.13(a)), it must not be bound to the tendered document. All copies must be clear and permanently legible.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Section 1701, Public Utilities Code.

1.9. (Rule 1.9) Service Generally.

(a) Except as otherwise provided in these rules or applicable statute, a requirement to serve a document means that a copy of the document must be served on each person whose name is on the official service list for the proceeding and on the assigned Administrative Law Judge (or, if none is yet assigned, on the Chief Administrative Law Judge).

(b) Except as otherwise provided in these rules or applicable statute, all documents that are tendered for filing pursuant to Rule 1.13 must be served.

(c) Service of a document may be effected by personally delivering a copy of the document to the person or leaving it in a place where the person may reasonably be expected to obtain actual and timely receipt, mailing a copy of the document by first-class mail, or electronically mailing the document as

provided in Rule 1.10, except that documents that are electronically tendered for filing as provided in Rule 1.14 must be served by e-mail as provided in Rule 1.10. Service by first-class mail is complete when the document is deposited in the mail. Service by e-mail is complete when the e-mail message is transmitted, subject to Rule 1.10(e). The Administrative Law Judge may direct or any party may consent to service by other means not listed in this rule (e.g., facsimile transmission).

(d) A person may serve a Notice of Availability in lieu of hard copy service under this rule or e-mail service under Rule 1.10 ~~all or part of the document to be served~~:

- (1) if the entire document, including attachments, exceeds 50 pages; or
- (2) if a document or part of the document is not reproducible in electronic format, or would cause the entire e-mail message, including all attachments, to exceed 3.5 megabytes in size, or would be likely to cause e-mail service to fail for any other reason; or
- (3) if the document is made available at a particular Uniform Resource Locator (URL) on the World Wide Web in a readable, downloadable, printable, and searchable format, unless use of such formats is infeasible; or
- (4) with the prior permission of the assigned Commissioner or Administrative Law Judge; except that the document must be served on any person who has previously informed the serving person of its desire to receive the document.

The Notice must comply with Rule 1.6(a), and shall state the document's exact title and summarize its contents, and provide the name, telephone number, and e-mail address, if any, of the person to whom requests for the document should be directed. The document shall be served within one business day after receipt of any such request.

If the document is made available at a particular URL, the Notice of Availability must contain a complete and accurate transcription of the URL or a hyperlink to the URL at which the document is available, and must state the date on which the document was made available at that URL. Such document must be maintained at that URL until the date of the final decision in the proceeding. If changes to the web site change the URL for the document, the serving person must serve and file a notice of the new URL.

(e) A copy of the certificate of service must be attached to each copy of the document (or Notice of Availability) served and to each copy filed with the Commission. If a Notice of Availability is served, a copy of the Notice must also be attached to each copy of the document filed with the Commission. The certificate of service must state: (1) the caption for the proceeding, (2) the docket number (if one has been assigned), (3) the exact title of the document served, ~~(24)~~ the place, date, and manner of service, and ~~(35)~~ the name of the person making the service. The certificate filed with the original of the document must be signed by the person making the service (see Rule 1.8(e)). The certificate filed with the original of the document must also include a list of the names, addresses, and, where relevant, the e-mail addresses of the persons and entities served and must indicate whether they received the complete document or a Notice of Availability. (See Rule 18.1, Form No. 4.)

(f) The Process Office shall maintain the official service list for each pending proceeding and post the service list on the Commission's web site. The official service list shall include the following categories:

- (1) Parties, as determined pursuant to Rule 1.4,
- (2) State Service, for service of all documents (available to California State employees only), and
- (3) Information Only, for electronic service of all documents only, unless otherwise directed by the Administrative Law Judge.

Persons will be added to the official service list, either as State Service or Information Only, upon request to the Process Office. It is the responsibility of each person or entity on the official service list to ensure that its designated person for service, mailing address and/or e-mail address shown on the official service list are current and accurate ~~provide a current mailing address and, if relevant, current e-mail address, to the Process Office.~~ A person may change its mailing address or e-mail address for service or its designation of a person for service by sending a written notice to the Process Office.

(g) The Administrative Law Judge may establish a special service list that includes some, but not all, persons on the official service list for service of documents related to a portion of a proceeding, provided that all persons on the official service list are afforded the opportunity to be included on the special service list. A special service list may be established, for example, for one phase of a multi-phase proceeding or for documents related to issues that are of interest only to certain persons.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. References: Sections 311.5 and 1704, Public Utilities Code.

1.10. (Rule 1.10) Electronic Mail Service.

(a) By providing an electronic mail (e-mail) address for the official service list in a proceeding, a person consents to e-mail service of documents in the proceeding, and may use e-mail to serve documents on persons who have provided an e-mail address for the official service list in the proceeding.

(b) Documents served by e-mail need not be otherwise served on persons who appear in the "Information Only" category of the official service list and have not provided an e-mail address for the official service list. Nothing in this rule excuses persons from serving copies of documents on persons who appear in the "Parties" and "State Service" categories of the official service list and have not provided an e-mail address for the official service list.

(c) E-mail service shall be made by sending the document, a link to the filed version of the document, or the Notice of Availability (see Rule 1.9(c)), as an attachment to an e-mail message to all e-mail addresses shown on the official service list on the date of service. The certificate of service shall be attached to the e-mail message as a separate document. Documents must be in readable, downloadable, printable, and searchable formats, unless use of such formats is infeasible. The subject line of the e-mail message must include in the following order (1) the docket number of the proceeding, (2) a brief name of the

proceeding, and (3) a brief identification of the document to be served, including the name of the serving person. The text of the e-mail message must identify the electronic format of the document (e.g., PDF, Excel), whether the e-mail message is one of multiple e-mail messages transmitting the document or documents to be served and, if so, how many e-mails, and the name, telephone number, e-mail address, and facsimile transmission number of the person to whom problems with receipt of the document to be served should be directed. The total size of a single e-mail message and all documents attached to it may not exceed 3.5 megabytes.

(d) By utilizing e-mail service, the serving person agrees, in the event of failure of e-mail service, to re-serve the document, no later than the business day after the business day on which notice of the failure of e-mail service is received by the serving party, ~~by any means authorized by these rules, provided that e-mail service may be used for re-service only if (1) the receiving person consents to the use of e-mail service, or (2) the serving person determines that the cause of the failure of e-mail service has been rectified. "Failure of e-mail service" occurs when the serving person receives notification, in any manner, of non-receipt of an e-mail message, or of the receiving person's inability to open or download an attached document, or of any other inability of the receiving person to access the document to be served. The serving person and receiving person may agree to any form for re-service allowed by these rules. The serving person is not required to re-serve, after failure of e-mail service, any person listed on the official service list as Information Only.~~

(e) In addition to any other requirements of this rule, the serving person must provide a paper copy of all documents served by e-mail service to the assigned Administrative Law Judge (or, if none is yet assigned, to the Chief Administrative Law Judge), unless the Administrative Law Judge orders otherwise.

(f) The Commission may serve any document in a proceeding by e-mail service, and/or by making it available at a particular URL, unless doing so would be contrary to state or federal law.

(g) Nothing in this rule alters any of the rules governing filing of documents with the Commission.

(h) The assigned Commissioner or Administrative Law Judge may issue any order consistent with these rules to govern e-mail service in a particular proceeding.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Section 311.5, Public Utilities Code; and Section 11104.5, Government Code.

1.13. (Rule 1.13) Tendering of Document for Filing.

Documents may be tendered for filing in hard copy or electronically, as follows, except that a utility whose gross intrastate revenues, as reported in the utility's most recent annual report to the Commission, exceed \$10 million shall electronically file all documents unless otherwise prohibited or excused by these rules:

(a) Hard copy:

(1) Documents must be tendered for filing at the Commission's Docket Office at the State Building, 505 Van Ness Avenue, San Francisco, California 94102, or at the Commission's Offices in the State Building, 320 West 4th Street, Suite 500, Los Angeles. All documents tendered by mail must be addressed to the Commission's Docket Office in San Francisco. Only hand-delivered documents will be accepted by the Los Angeles office. First-class postage charges to San Francisco must be paid at the time documents are tendered to the Los Angeles office. Payment of postage charges may be made by check or money order.

(2) Except for Proponent's Environmental Assessments (see Rule 2.4(b)) and complaints (see Article 4), an original and six exact copies of the document (including any attachments but not including the transmittal letter, if any) shall be tendered. After assignment of the proceeding to an Administrative Law Judge, an original and three copies of the document shall be tendered.

In lieu of the original, one additional copy of the document may be tendered. If a copy is tendered instead of the original, the person tendering the document must retain the original, and produce it at the Administrative Law Judge's request, until the Commission's final decision in the proceeding is no longer subject to judicial review.

(b) Electronic:

(1) Documents must be transmitted to the Docket Office using the Electronic Filing System on the Commission's website at <http://www.cpuc.ca.gov/PUC/efiling>.

(i) Documents must be transmitted in searchable, PDF Archive format (PDF/A).

(ii) A single transmission may not exceed 20.0 megabytes in size. Documents tendered in a transmission that exceeds this limit shall not be filed electronically.

(iii) The certificate of service must be transmitted with the document as a separate attachment.

(2) Electronically tendered documents will not be filed under seal. Documents which a person seeks leave to file under seal (Rule 11.4) must be tendered by hard copy. However, redacted versions of such documents may be electronically tendered for filing.

(3) A Notice of Acknowledgment of Receipt of the document is immediately available to the person tendering the document confirming the date and time of receipt of the document by the Docket Office for review. In the absence of a Notice of Acknowledgment of Receipt, it is the responsibility of the person tendering the document to obtain confirmation that the Docket Office received it.

(4) The Docket Office shall deem the electronic filing system to be subject to a technical failure on a given day if it is unable to accept filings continuously or intermittently over the course of any period of time greater than one hour after 12:00 noon that day, in which case filings due

that day shall be deemed filed that day if they are filed the next day the system is able to accept filings.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Section 1701, Public Utilities Code.

2.4. (Rule 2.4) CEQA Compliance.

~~(a) Applications for authority to undertake any projects that are subject to the California Environmental Quality Act of 1970, Public Resources Code Sections 21000 et seq. (CEQA) and the guidelines for implementation of CEQA, California Administrative Code Sections 15000 et seq., shall be consistent with these codes and this rule.~~

~~(b) Any~~ Upon filing an application for authority to undertake a project that is not statutorily or categorically exempt from CEQA requirements, the applicant shall include submit a Proponent's Environmental Assessment (PEA) to the appropriate Commission industry division. The PEA shall include all information and studies required under the Commission's Information and Criteria List adopted pursuant to Chapter 1200 of the Statutes of 1977 (Government Code Sections 65940 through 65942), which is published on the Commission's Internet website. ~~The original and three copies of the PEA shall be tendered with the application, the copies of which may be tendered for filing in a CD-ROM/DVD format.~~ The application shall include a sworn declaration of compliance with this requirement.

~~(c)~~ Any application for authority to undertake a project that is statutorily or categorically exempt from CEQA requirements shall so state, with citation to the relevant authority.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701, Public Utilities Code.

3.3. (Rule 3.3) Certificate to Operate.

(a) Applications for a certificate to operate as a vessel common carrier or passenger stage corporation shall contain the following information:

- (1) The type of service being performed by applicant, a general description of it, and a reference to the authority under which existing service is performed.
- (2) The specific authority requested and the particular statutory provision under which the certificate is requested.
- (3) If a carrier of property, a description of specified commodities proposed to be transported, and, if general commodities with exceptions are proposed to be transported, a statement specifying such exceptions.

- (4) The geographical scope of the proposed operation, including the termini and other points proposed to be served, and a concise narrative description of the proposed route.
 - (5) A map or sketch of the route and points to be served, drawn to suitable indicated scale, and showing present and proposed operation by distinctive coloring or marking.
 - (6) A statement of the rates or fares proposed to be charged and rules governing service. Applications for certificates need not contain tariffs, but shall indicate the level and nature of proposed rates and rules and may refer to tariffs on file with or issued by the Commission.
 - (7) A statement indicating the frequency of the proposed service. If "on call" service is proposed, the application shall set forth conditions under which such service would be performed.
 - (8) The kind and approximate number of units of equipment to be employed in the proposed service.
 - (9) A statement of financial ability to render the proposed service.
 - (10) Facts showing that the proposed operation is required by public convenience and necessity.
- (b) Every applicant for a passenger stage certificate shall forward a copy of the application to each public transit operator operating in any portion of the territory sought to be served by the applicant. The applicant shall also mail a notice that the application has been filed with the Commission to all city and county governmental entities and regional transportation planning agencies within whose boundaries passengers will be loaded or unloaded. This notice shall state in general terms the authority sought, including the proposed routes, schedules, fares and equipment. Said notice shall also state that a copy of the application and related exhibits will be furnished by applicant upon written request. A copy of the notice and a certificate of service shall be filed with the application.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Sections 701, 1007, ~~1010~~, 1032, ~~1062~~ and 1701, Public Utilities Code.

3.6. (Rule 3.6) Transfers and Acquisitions.

Applications to sell, lease or encumber utility property or rights, to merge or consolidate facilities, to acquire stock of another utility, or to acquire or control a utility under Sections 851 through 854 of the Public Utilities Code shall be signed by all parties to the proposed transaction, except the lender, vendor under a conditional sales contract, or trustee under a deed of trust, unless such person is a public utility. In addition, they shall contain the following data:

- (a) The character of business performed and the territory served by each applicant.
- (b) A description of the property involved in the transaction, including any franchises, permits, or operative rights; and, if the transaction is a sale, lease, assignment, merger or consolidation, a statement of the book cost and the original cost, if known, of the property involved.

- (c) Detailed reasons upon the part of each applicant for entering into the proposed transaction, and all facts warranting the same.
- (d) The agreed purchase price and the terms for payment. If a merger or consolidation, the full terms and conditions thereof.
- (e) In consolidation and merger proceedings, a financial statement as outlined in Rule 2.3. In other transfer proceedings, a balance sheet as of the latest available date, together with an income statement covering period from close of last year for which an annual report has been filed with the Commission to the date of the balance sheet attached to the application.
- (f) Copy of proposed deed, bill of sale, lease, security agreement, mortgage, or other encumbrance document, and contract or agreement therefor, if any, and copy of each plan or agreement for purchase, merger or consolidation.
- (g) If a merger or consolidation, a pro forma balance sheet giving effect thereto.
- (h) Applications that involve a certificate or operative right as vessel common carrier or passenger stage corporation shall also state, as to the seller, whether it is a party to any through routes or joint rates or fares with any other carrier, and whether operation under the rights involved is presently being conducted. If there has been any suspension or discontinuance of service during the preceding three years, the application shall state those facts and circumstances.

Note: Authority cited: Article 12, Section 2, California Constitution; and Section 1701, Public Utilities Code. Reference: Sections 1007, 1010 and 1032.

4.2. (Rule 4.2) Form and Contents of Complaint.

- (a) Complaints shall state the full name, address and telephone number of each complainant and his attorney, if any, and of each defendant. The specific act complained of shall be set forth in ordinary and concise language. The complaint shall be so drawn as to completely advise the defendant and the Commission of the facts constituting the grounds of the complaint, the injury complained of, and the exact relief which is desired. At least one complainant must verify the complaint and any amendments thereto. (See Rule 1.11.) The complaint shall state the proposed category for the proceeding, the need for hearing, the issues to be considered, and a proposed schedule. The proposed schedule shall be consistent with the categorization of the proceeding, including a deadline for resolving the proceeding within 12 months or less (adjudicatory proceeding) or 18 months or less (ratesetting or quasi-legislative proceeding). (See Article 7.)
- ~~(b) Documents may be tendered for filing in hard copy or electronically as provided in Rule 1.13, except that only the original document (and no copies) shall be tendered for filing in hard copy.~~
- ~~(c)~~ A complaint which does not allege that the matter has first been brought to the staff for informal resolution may be referred to the staff to attempt to resolve the matter informally.

Note: Authority cited: Section 1702, Public Utilities Code. Reference: Sections 1702 and 1707, Public Utilities Code.

8.3. (Rule 8.3) Ex Parte Requirements.

(a) In any quasi-legislative proceeding, ex parte communications are allowed without restriction or reporting requirement.

(b) In any adjudicatory proceeding, ex parte communications are prohibited.

(c) In any ratesetting proceeding, ex parte communications are subject to the reporting requirements set forth in Rule 8.4. In addition, the following restrictions apply:

(1) All-party meetings: Oral ex parte communications are permitted at any time with a Commissioner provided that the Commissioner involved (i) invites all parties to attend the meeting or sets up a conference call in which all parties may participate, and (ii) gives notice of this meeting or call as soon as possible, but no less than three days before the meeting or call.

(2) Individual oral communications: If a decisionmaker grants an ex parte communication meeting or call to any interested person individually, all other parties shall be granted an individual meeting of a substantially equal period of time with that decisionmaker. The interested person requesting the initial individual meeting shall notify the parties that its request has been granted, and shall file a certificate of service of this notification, at least three days before the meeting or call.

(3) Written ex parte communications are permitted at any time provided that the interested person making the communication serves copies of the communication on all parties on the same day the communication is sent to a decisionmaker.

(4) Ratesetting Deliberative Meetings and Ex Parte Prohibitions:

(A) The Commission may prohibit ex parte communications for a period beginning not more than 14 days before the day of the Commission Business Meeting at which the decision in the proceeding is scheduled for Commission action, during which period the Commission may hold a Ratesetting Deliberative Meeting. If the decision is held, the Commission may permit such communications for the first half of the hold period, and may prohibit such communications for the second half of the period, provided that the period of prohibition shall begin not more than 14 days before the day of the Business Meeting to which the decision is held.

(B) In proceedings in which a Ratesetting Deliberative Meeting has been scheduled, ex parte communications are prohibited from the day of the Ratesetting Deliberative Meeting at which the decision in the proceeding is scheduled to be discussed through

the conclusion of the Business Meeting at which the decision is scheduled for Commission action.

(d) Notwithstanding Rule 8.5, unless otherwise directed by the assigned Administrative Law Judge with the approval of the assigned Commissioner, the provisions of subsections (b) and (c) of this rule, and any reporting requirements under Rule 8.4, shall cease to apply, and ex parte communications shall be permitted, in any proceeding in which (1) no timely answer, response, protest, or request for hearing is filed, (2) all such responsive pleadings are withdrawn, or (3) a scoping memo has issued determining that a hearing is not needed in the proceeding.

(e) Ex parte communications concerning categorization of a given proceeding are permitted, but must be reported pursuant to Rule 8.4.

(f) Ex parte communications regarding the assignment of a proceeding to a particular Administrative Law Judge, or reassignment of a proceeding to another Administrative Law Judge, are prohibited. For purposes of this rule, "ex parte communications" include communications between an Administrative Law Judge and other decisionmakers about a motion for reassignment of a proceeding assigned to that Administrative Law Judge.

(g) The requirements of this rule, and any reporting requirements under Rule 8.43, shall apply until (1) the date when the Commission serves the decision finally resolving any application for rehearing, or (2) where the period to apply for rehearing has expired and no application for rehearing has been filed.

(h) Upon the filing of a petition for modification, the requirements of this rule, and any reporting requirements under Rule 8.4, that applied to the proceeding in which the decision that would be modified was issued shall apply until and unless (1) no timely response, protest or request for hearing is filed, (2) all such responsive pleadings are withdrawn, or (3) a scoping memo has issued determining that a hearing is not needed in the proceeding or that a different category shall apply.

(i) Where a proceeding is remanded to the Commission by a court or where the Commission re-opens a proceeding, the requirements of this rule and any reporting requirements under Rule 8.4 that previously applied to the proceeding shall apply until and unless a Commission order or a scoping memo has issued determining that a hearing is not needed in the proceeding or that a different category shall apply.

(j) When the Commission determines that there has been a violation of this rule or of Rule 8.4, the Commission may impose penalties and sanctions, or make any other order, as it deems appropriate to ensure the integrity of the record and to protect the public interest.

(k) The Commission shall render its decision based on the evidence of record. Ex parte communications, and any notice filed pursuant to Rule 8.3, are not a part of the record of the proceeding.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Sections 1701.1(a), 1701.2(b), 1701.3(c) and 1701.4(b), Public Utilities Code.

13.1. (Rule 13.1) Notice.

(a) The Commission shall give notice of evidentiary hearing not less than ten days before the date of hearing, unless it finds that public necessity requires hearing at an earlier date.

(b) Whenever any electrical, gas, heat, telephone, water, or sewer system utility files an application to increase any rate, the utility shall give notice of hearing, not less than five nor more than 30 days before the date of hearing, to entities or persons who may be affected thereby, by posting notice in public places and by publishing notice in a newspaper or newspapers of general circulation in the area or areas concerned, of the time, date, and place of hearing. Proof of publication and sample copies of the notices shall be filed within 10 days after publication.

(c) In addition to the notice required by this rule, parties shall provide such notice of hearing as the presiding officer may designate.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1704, Public Utilities Code.

13.7. (Rule 13.7) Exhibits.

(a) Exhibits and copies of exhibits shall be legible and either prepared on paper not exceeding 8 ½ x 13 inches in size, ~~or bound~~ or folded to that approximate size. ~~Wherever practicable, t~~Exhibits of two or more pages shall be bound and, wherever practicable, the sheets pages of each exhibit should shall be numbered. Exhibits that contain multiple chapters or attachments shall include a table of contents, and ~~Rate comparisons and other figures shall be set forth in tabular form. Copies of exhibits must be clear and permanently legible.~~ The top sheet of an exhibit must have a blank space two inches high by four inches wide to accommodate the Commission's exhibit stamp.

(b) When exhibits are offered in evidence, the original plus one copy shall be furnished to the presiding officer and one copy to the reporter and to each party, unless the presiding officer directs otherwise.

(c) Documentary exhibits shall be limited to those portions of the document that are relevant and material to the proceeding.

(d) If relevant and material matter offered in evidence is embraced in a document containing other matter, parties shall be afforded opportunity to examine the document, and to offer in evidence other portions thereof believed material and relevant.

(e) All documents that are prepared, directly or indirectly, by the party offering them into evidence shall be certified under penalty of perjury by the person preparing or in charge of preparing them as being true and correct, unless the person preparing them is dead or has been declared incompetent, in which case any other person having knowledge of such statements of fact may certify such documents.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701, Public Utilities Code.

13.8. (Rule 13.8) Prepared Testimony.

(a) Prepared testimony may be ~~offered identified and accepted~~ in evidence as an exhibit in lieu of oral testimony under direct examination, provided that copies shall have been served upon all parties prior to hearing and pursuant to the schedule adopted in the proceeding. Prepared testimony shall constitute the entirety of the witness's direct testimony, and shall include any exhibits to be offered in support of the testimony and, in the case of an expert witness, a statement of the witness's qualifications.

(b) Direct testimony in addition to the prepared testimony previously served, other than the correction of minor typographical or wording errors that do not alter the substance of the prepared testimony, will not be accepted into evidence unless the sponsoring party shows good cause why the additional testimony could not have been served with the prepared testimony or should otherwise be admitted. Corrections to minor typographical or wording errors in prepared testimony may be offered in evidence as an exhibit in lieu of oral testimony under direct examination.

(c) ~~Prepared testimony of more than 20 pages must contain a subject index.~~

~~(d) In the absence of an evidentiary hearing, p~~Prepared testimony may be offered into evidence by written motion or by oral motion at a prehearing conference, if any. ~~in a proceeding in which it is preliminarily determined that a hearing is not needed and (1) the proceeding was initiated by application, complaint, or order instituting investigation, and no timely protest, answer, or response is filed, or (2) the proceeding was initiated by Commission order, and no timely request for hearing is filed. If the offer is by written motion, ¶~~the prepared testimony shall not be filed with the motion, but shall be concurrently served ~~on~~ with the motion. ~~all parties. The serving party shall serve t~~Two copies of the shall be served ~~exhibits~~ on the Administrative Law Judge or, if none is yet assigned, on the Chief Administrative Law Judge. The motion shall include a declaration under penalty of perjury by the person preparing or in charge of preparing the prepared testimony as being true and correct, unless the person preparing them is dead or has been declared incompetent, in which case any other person having knowledge of such statements of fact may certify such documents.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701, Public Utilities Code.

13.11. (Rule 13.11) Closing Briefs.

The Administrative Law Judge or presiding officer, as applicable, may fix the time for the filing of closing briefs. Concurrent briefs are preferable. Factual statements must be supported by identified evidence of record. Citations to the transcript ~~in a proceeding~~ must indicate the transcript page number(s) and identify the party and witness sponsoring the cited testimony. Citations to exhibits must indicate the exhibit number and exhibit page number. A brief of more than 20 pages shall contain a subject index, a

table of authorities, and a summary of the briefing party's recommendations following the table of authorities.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701, Public Utilities Code.

13.13. (Rule 13.13) Oral Argument Before Commission.

(a) The Commission may, on its own motion or upon recommendation of the assigned Commissioner or Administrative Law Judge, direct the presentation of oral argument before it.

(b) In ratesetting and quasi-legislative proceedings in which hearings were held, a party has the right to make a final oral argument before the Commission, provided that the party makes such request in its closing brief or, if closing briefs are not permitted by the scoping memo, in the manner otherwise specified in the scoping memo.~~if the party so requests within the time and in the manner specified in the scoping memo or later ruling in the proceeding.~~ A quorum of the Commission shall be present; however, a Commissioner may be present by teleconference to the extent permitted by the Bagley-Keene Open Meeting Act.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Sections ~~1701.3(a)~~, 1701.3(d) and 1701.4(c), Public Utilities Code.

14.1. (Rule 14.1) Definitions.

For purposes of this article, the following definitions shall apply:

(a) "Presiding officer's decision" is a recommended decision that is proposed by the presiding officer in an adjudicatory proceeding in which evidentiary hearings have been conducted.

(b) "Proposed decision" is a recommended decision, other than a presiding officer's decision as defined in subsection (a), that is proposed by (1) the presiding officer or (2) where there is not a presiding officer, the assigned Administrative Law Judge or the assigned Commissioner.

(c) "Draft resolution" is a recommended resolution that is proposed by a Commission director.

(d) "Alternate proposed decision" or "alternate draft resolution" means a substantive revision by a Commissioner to a ~~recommended~~ proposed decision or draft resolution not proposed by that Commissioner ~~or to a draft resolution~~ which either:

(1) materially changes the resolution of a contested issue, or

(2) makes any substantive addition to the findings of fact, conclusions of law, or ordering paragraphs.

"Alternate proposed decision" also means a recommended decision prepared by the assigned Administrative Law Judge in ratesetting proceeding where the assigned Commissioner is the presiding officer.

A substantive revision to a proposed decision or draft resolution is not an "alternate proposed decision" or "alternate draft resolution" if the revision is made by the proponent of the proposed decision or draft resolution and does no more than make changes suggested in prior comments on the proposed decision or draft resolution; or in a prior alternate to the proposed decision or draft resolution.

Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 311, Public Utilities Code.

14.2. (Rule 14.2) Issuance of Recommended Decision.

(a) A proposed decision shall be filed ~~with the Commission and served on the official service list without undue delay,~~ not later than 90 days after submission. An alternate proposed decision by the assigned commissioner or assigned administrative law judge shall be filed concurrently with the proposed decision.

(b) A presiding officer's decision shall be filed ~~with the Commission and served on the official service list without undue delay,~~ no later than 60 days after submission.

(c) An alternate ~~to a~~ proposed decision shall be filed ~~with the Commission and served on the official service list~~ without undue delay.

(d) A draft resolution shall not be filed with the Commission, but shall be served as follows, and on other persons as the Commission deems appropriate:

(1) A draft resolution disposing of an advice letter shall be served on the utility that proposed the advice letter, on any person who served a protest or response to the advice letter, and any person whose name and interest in the relief sought appears on the face of the advice letter (as where the advice letter seeks approval of a contract or deviation for the benefit of such person);

(2) A draft resolution disposing of a request for disclosure of documents in the Commission's possession shall be served on (A) the person who requested the disclosure, (B) any Commission regulate about which information protected by Public Utilities Code Section 583 would be disclosed if the request were granted, and (C) any person (whether or not a Commission regulate) who, pursuant to protective order, had submitted information to the Commission, which information would be disclosed if the request were granted;

(3) A draft resolution disposing of one or more requests for motor carrier operating authority shall be served on any person whose request would be denied, in whole or part, and any person protesting a request, regardless of whether the resolution would sustain the protest;

(4) A draft resolution establishing a rule or setting a fee schedule for a class of Commission-regulated entities shall be served on any person providing written comment solicited by Commission staff (e.g., at a workshop or by letter) for purposes of preparing the draft resolution.

An alternate to a draft resolution shall be served consistent with the service of the draft resolution.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Sections 311(d), 311(f), 1701.1, 1701.3 and 1701.4, Public Utilities Code.

14.5. (Rule 14.5) Comment on Draft or Alternate Draft Resolution.

Any person may comment on a draft or alternate draft resolution by serving (but not filing) comments ~~on the director of the Commission division that issued the draft resolution by no later than ten days before the Commission meeting when the draft or alternate resolution is first scheduled for consideration (as indicated on the first page of the draft or alternate resolution).~~

~~Comments shall be concurrently served on either (a) all persons shown on the service list appended to the draft or alternate resolution, if any, or (b) in accordance with the instructions accompanying the notice of the draft or alternate draft resolution as an agenda item in the Commission's Daily Calendar.~~

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Sections 311(e) and 311(g), Public Utilities Code.

14.6. (Rule 14.6) Reduction or Waiver of Review.

(a) In an unforeseen emergency situation, the Commission may reduce or waive the period for public review and comment on proposed decision, draft resolutions, and their alternates. "Unforeseen emergency situation" means a matter that requires action or a decision by the Commission more quickly than would be permitted if advance publication were made on the regular meeting agenda. Examples include, but are not limited to:

- (1) Activities that severely impair or threaten to severely impair public health or safety.
- (2) Crippling disasters that severely impair public health or safety.
- (3) Administrative disciplinary matters, including, but not limited to, consideration of proposed decisions and stipulations, and pending litigation, that require immediate attention.
- (4) Consideration of applications for licenses or certificates for which a decision must be made in less than ten days.

(5) Consideration of proposed legislation that requires immediate attention due to legislative action that may be taken before the next regularly scheduled Commission meeting, or due to time limitations imposed by law.

(6) Requests for relief based on extraordinary conditions in which time is of the essence.

(7) Deadlines for Commission action imposed by legislative bodies, courts, other administrative bodies or tribunals, the office of the Governor, or a legislator.

(8) Unusual matters that cannot be disposed of by normal procedures if the duties of the Commission are to be fulfilled.

A rate increase is not an unforeseen emergency situation.

(b) The Commission may reduce or waive the period for public review and comment on proposed decisions and their alternates, where all the parties so stipulate, and on draft resolutions and their alternates, where all persons identified in subsection (1), (2), (3) or (4) of Rule 14.2(d) so stipulate.

(c) In the following circumstances, the Commission may reduce or waive the period for public review and comment on draft resolutions and proposed decisions, and may reduce but not waive the period for public review and comment on alternates ~~to them~~ draft resolutions and alternate proposed decisions:

(1) in a matter where temporary injunctive relief is under consideration.

(2) in an uncontested matter where the decision grants the relief requested.

(3) for a decision on a request for review of the presiding officer's decision in an adjudicatory proceeding.

(4) for a decision extending the deadline for resolving adjudicatory proceedings (Public Utilities Code Section 1701.2(d)) or for resolving the issues raised in the scoping memo in a ratesetting or quasi-legislative proceeding (Public Utilities Code Section 1701.5).

(5) for a decision under the state arbitration provisions of the federal Telecommunications Act of 1996.

(6) for a decision on a request for compensation pursuant to Public Utilities Code Section 1801 et seq.

(7) for a decision authorizing disclosure of documents in the Commission's possession when such disclosure is pursuant to subpoena.

(8) for a decision under a federal or California statute (such as the California Environmental Quality Act or the Administrative Procedure Act) that both makes comprehensive provision for public review and comment in the decision-making process and sets a deadline from initiation of the proceeding within which the Commission must resolve the proceeding.

(9) for a decision in a proceeding in which no hearings were conducted where the Commission determines, on the motion of a party or on its own motion, that public necessity requires reduction or

waiver of the 30 day period for public review and comment. For purposes of this subsection, "public necessity" refers to circumstances in which the public interest in the Commission adopting a decision before expiration of the 30-day review and comment period clearly outweighs the public interest in having the full 30-day period for review and comment. "Public necessity" includes, without limitation, circumstances where failure to adopt a decision before expiration of the 30-day review and comment period would place the Commission or a Commission regulatee in violation of applicable law, or where such failure would cause significant harm to public health or welfare. When acting pursuant to this subsection, the Commission will provide such reduced period for public review and comment as is consistent with the public necessity requiring reduction or waiver.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Sections 306(b), 311(e), 311(g), 1701.2(d) and 1701.5, Public Utilities Code; and Section 11125.5, Government Code.

15.2. (Rule 15.2) Meeting Agenda.

(a) At least ten days in advance of the Commission meeting, the Commission will issue an agenda listing the items of business to be transacted or discussed by publishing it on the Commission's Internet website. The agenda is also available for viewing and photocopying (for a fee) at the Process Central Files Office.

(b) Members of the public, other than persons who have consented to e-mail service in a proceeding pursuant to Rule 1.10, may place a standing order with the Commission's Administrative Law Judge Division to subscribe to receive hard copies of the agenda.

(c) A matter not appearing on the agenda of a meeting will not be decided unless:

(1) The Commission determines by majority vote that an unforeseen emergency situation, as defined in the Bagley-Keene Open Meeting Act exists;

(2) The Commission determines by a two-thirds majority (or, if less than two-thirds of the Commissioners are present, by a unanimous vote of those Commissioners present) that a need to take immediate action exists and that the need for this action came to the Commission's attention after the agenda for the meeting was issued; or

(3) As otherwise permitted by the Bagley-Keene Open Meeting Act.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Sections 306(b) and 311.5, Public Utilities Code; Sections 11125(b), 11125.3 and 11126.3(d), Government Code.

16.6. (Rule 16.6) Extension of Time to Comply.

Requests for extension of time to comply with a Commission decision or order may be made by letter or e-mail to the Executive Director, with a copy served at the same time on all parties to the proceeding and on the Administrative Law Judge Division (by letter to the Chief Administrative Law Judge, or by e-mail to aljextensionrequests@cpuc.ca.gov). A copy of the certificate of service must be attached to the letter or e-mail. The e-mail, the letter, or a facsimile of the letter, must be received by the Executive Director at least ~~three business~~ 10 days before the existing date for compliance. If the Executive Director grants the extension, the party requesting the extension must promptly inform all parties to the proceeding of the extension and must state in the opening paragraph of the document that the Executive Director has authorized the extension.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Section 1708, Public Utilities Code.

(END OF APPENDIX)

INFORMATION REGARDING SERVICE

I certify that I have by e-mail this day served a true copy of the original attached RESOLUTION ALJ-290 - Amending the Rules of Practice and Procedure (Title 20, Division 1, of the California Code of Regulations) by electronic service on all persons listed on the Rules Updates service list for notification of prepared changes to the Rules of Practice and Procedure. (See <http://www.cpuc.ca.gov/puc/practitioner>)

Dated May 6, 2013, at San Francisco, California.

/s/ ANN CHRISTINA ROTHCHILD

Ann Christina Rothchild